Award No. 3954
Docket No. 3811
2-GC&SF-BM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Boilermakers)

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the current agreement the Carrier improperly assigned work of the Boilermakers Classification to Shop Extension Forces, or Sheet Metal Workers, at Cleburne, Texas.

2. That accordingly the Gulf, Colorado & Santa Fe Railway be ordered to additionally compensate employes of the Boilermakers' Craft at their applicable rates of pay, for the aforesaid violation as follows:

R. F. Pollock	8 hours
N. Miller	8 hours
Total Hours	16 hours

EMPLOYES' STATEMENT OF FACTS: At Cleburne, Texas, the Gulf, Colorado & Santa Fe Railway, hereinafter referred to as the carrier, maintains a large repair shop. To supply power for operation of said shop, a large power house is maintained.

The carrier maintains in said Cleburne repair shops a force of boilermakers, apprentices and helpers, who hold seniority at that point in accordance with the Rules Agreement.

On or about April 7, 1958, the carrier elected to change the location of the pop-off valves on four high pressure air reservoirs adjacent to the Main Power House at Cleburne Shops. Said high pressure reservoirs were a part of the shop equipment always maintained by the Shop Force of boilermakers.

Carrier assigned the work of applying patches and drilling rivet holes to Shop Extension forces. Shop boilermakers made the patches, laid up, or fit them to the reservoirs and drove the rivets, which rivets secured the patches

Now I do not know why the Carrier elected to patch the pop-off valves of the particular tanks or drums involved in this instant claim. Certainly it is immaterial why they did elect to so strengthen them. The fact is they did apply reinforcing patches to the said tanks or drums. * * *"

As heretofore brought out, no repairs were made to these air reservoirs, but instead the pop-off valve on each one was moved from the top to the side to remedy a safety hazard when testing the pop-off valve. There was no strengthening involved as thought by the claimant Organization, and that is the reason the organization is so reluctant to agree with the carrier that "flanges" were utilized and not "patches", and it was entirely proper for the Shop Extension Department forces to reconstruct the four air reservoirs in question.

In conclusion, the carrier respectfuly reasserts that the employes' claim in the instant dispute is entirely without merit or support under the governing agreement rules and the long-standing practices thereunder, and should, for the reasons expressed herein, be dismissed or denied in its entirety.

Carrier reserves the right to submit such additional facts and evidence as it may conclude are necessary in reply to the ex parte submission of the Employes or any subsequent oral arguments or brief of the employes in this dispute.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On or about April 7, 1958, the Carrier decided for safety reasons to remove the pop-off valve from the top of each of four air reservoirs at its Cleburne (Texas) Shops and relocate it on the side of each reservoir. Part of the work involved was performed by employes belonging to the Blacksmiths' Machinists, and Boilermakers' crafts, respectively. However, Shop Extension Department (SED) employes who are represented by the Sheet Metal Workers' International Association, laid out the new location for the pop-off valves on each reservoir, cut one 3-inch hole, drilled twelve 1-inch holes in each reservoir, and then temporarily bolted the flanges or patches in place.

The two Claimants who are Boilermakers contend that said work should have been assigned to them and was improperly assigned to SED employes. They request, therefore, eight hours' pay for each of them.

The Carrier has defended its denial of said claim on the various grounds discussed below:

First, the Carrier argues that the claim as described at the second step of the contractual grievance procedure was not the same as the one initialy presented to it at the first step thereof and that, therefore, the claim before us was not properly handled as required under Rule 33, Paragraphs (a) and (b) of the

Labor agreement. For the reasons hereinafter stated, we are of the opinion that the Carrier's argument is without merit.

It is a well-established rule of law generally observed in the application and interpretation of a collective bargaining agreement that such an agreement, as a safeguard of industrial and social peace, should be given a fair and liberal interpretation consonant with its spirit and purpose — disregarding, as far as feasible, strict technicalities or undue legalism which would tend to deprive the agreement of its vitality and effectiveness. See: Yazoo & M.V.R. Co. v. Webb, 65 F.2d. 902, 903 (Ca-5, 1933); Arbitration Award in re Cameron Iron Works, Inc., 25 LA 295, 299 (1955). Moreover, in interpreting and applying the grievance procedure incorporated in a labor agreement, flexibility is of the essance in order equitably to meet a wide variety of situations in the light of the realities of industrial file. See: United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597; 80 S. Ct. 1358, 1361 (1960).

In applying the above principles to the facts underlying this case, we have reached the following conclusions:

The record shows that the claim in question was adequately identified by Local Chairman Smith in his initial letter of May 6, 1958, to Master Mechanic Nimmo who, in turn, denied it in a letter, dated May 19, 1958. His denial was appealed by General Chairman Riddle in a letter, dated May 30, 1958, to Mechanical Superintedent Pierson. It may be conceded that the description of the claim in General Chairman Riddle's letter was not as precise as it could technically have been described. On the other hand, a careful review of the letter can leave no doubt that it clearly contained an appeal from the adverse decision of Master Mechanic Nimmo and that there was no attempt or intent on the part of General Chairman Riddle to substitute a different claim for the one originaly submitted by Local Chairman Smith. The decisive point is that the substance of the claim remained unchanged, irrespective of the language used in the letter of appeal. Under these circumstances, it would run counter to the basic tenets of fairness and flexibility to deny the instant claim on the basis of the narrow technical ground advanced by the Carrier. Consequently, we hold that Paragraphs (a) and (b) of Rule 33 have not been violated.

Second, the Carrier contends that there exists a jurisdictional dispute between the Boilermakers' Organization and the Sheet Metal Workers' Association which should be settled in the manner prescribed in Item 1 of Appendix B to the Labor agreement.

The flaw in said contention is that the latter Association has never claimed any jurisdiction over the work here in dispute. On the contrary, its members protested the assignment thereof to them and informed the foreman that, in their opinion, the work belonged to Boilermakers (Organization Exhibit B). Thus, we fail to see the existence of a jurisdictional dispute.

Third, the Carrier submits that the SED employes are represented by the Sheet Metal Workers' Association and that they have rights under the labor agreement which may be affected by our decision. As a result, the Carrier asserts that the Association is involved in the instant dispute and should have been given due notice of all hearings pursuant to Section 3, First (j) of the Railway Labor Act.

The answer to said assertion is that the Association as well as the employes represented by it are not interested but disinterested parties to the dispute before us as clearly evidenced by the aforementioned Organization

Exhibit B. They are not, therefore, involved in the instant case within the purview of Section 3, First (j) of the Act.

Fourth, the Carrier maintains that SED employes have, throughout the years, performed work of a nature similar to that here in question and that their use in the instant case was proper under Item 23 of Appendix B to the labor agreement.

Said Item provides, in essence, that the classification of work rules of the General Agreement shall not change existing practices of handling certain classes of work by SED employes util a survey has been made and a definite line of demarcation can be agreed upon with the organizations involved. The evidence on the record considered as a whole does not permit a finding to the effect that a consistently observed practice, under which SED employes performed work of the same or substantially similar nature as that here in dispute, has existed at the Carrier's property prior to and after the effective date of the labor agreement (August 1, 1945). Consequently, Item 23 does not sustain the Carrier's defense.

Fifth, the Carrier denies that Rule 61 of the labor agreement on which the Claimants chiefly rely is here applicable. Said Rule reads, as far as pertinent, as follows:

> "Boilermakers' work shall consist of laying out, cutting apart, building or repairing boilers, tanks and drums, inspecting **patching**, riveting, chipping, calking, **flanging**, and all flue work; * * *" (Emphasis ours).

The Rule unequivocally states that Boilermakers' work shall, among other things, consist of patching or flanging. Thus, it is of no significance whether the work performed by the SED employes involved "patches" or "flanges" because all work directly connected with the installation or application of both is specifically included in Rule 61. The clear and unambiguous wording of the Rule must be controlling with respect to the assignment of such work.

In summary, we hold that the work here complained of belonged to the Claimants and could not legitimately be assigned to SED employes. Hence, the instant claim for compensation at the applicable pro rata rate is justified.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1962.